

STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals
Judges: Donofrio, P.J., and Murphy and Kelly, JJ.

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

KEITH DEMOND THOMPSON,

Defendant-Appellee.

Supreme Court No. 130825

Court of Appeals No. 258336

7th Judicial Circuit;

File No. 04-013556-FH;

Hon. Geoffrey L. Neithercut

BRIEF ON APPEAL-APPELLEE

Patrick K. Ehlmann (P31644)
Attorney for Defendant-Appellee
1411 N. Harrison Ave.
East Lansing, MI 48823-1801
(517) 324-9577

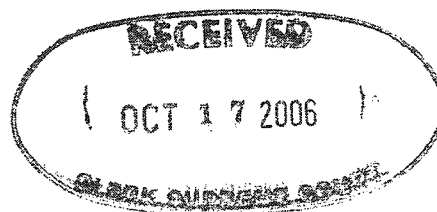


TABLE OF CONTENTS

	<u>PAGE</u>
INDEX OF AUTHORITIES	i
COUNTERSTATEMENT OF JURISDICTION OF THE SUPREME COURT	iii
COUNTERSTATEMENT OF QUESTIONS PRESENTEDiv
COUNTERSTATEMENT OF FACTS	1
ARGUMENT:	
I. WHETHER A DEFENDANT MUST "KEEP OR MAINTAIN" A VEHICLE USED FOR THE PURPOSE OF SELLING A CONTROLLED SUBSTANCE "CONTINUOUSLY FOR AN APPRECIABLE PERIOD OF TIME" AS REQUIRED BY <i>PEOPLE V GRIFFIN</i> , 235 MICH APP 27, 32-33 (1999), IN ORDER TO SUSTAIN A CONVICTION UNDER MCL 333.7405(1) (d)?	2
II. WHETHER THE EVIDENCE PRESENTED IN THIS CASE WAS SUFFICIENT TO SUSTAIN THE DEFENDANT'S CONVICTION FOR KEEPING OR MAINTAINING A DRUG VEHICLE?	16
RELIEF REQUESTED18

INDEX OF AUTHORITIES

<u>CASES:</u>	<u>PAGE</u>
<i>Barnes v State</i> , 339 SE2d 229 (Ga, 1986)	7, 8
<i>Commonwealth v Patterson</i> , 138 Mass 498, 500 (1885)	14
<i>Dawson v State</i> , 894 P2d 672 (Alas App, 1995)	6, 8, 9
<i>Meeks v State</i> , 872 P2d 936 (Okla Cr App, 1994)	6-7, 8
<i>People v Bartlett</i> , 231 Mich App 139; 585 NW2d 341 (1998)	9, 12
<i>People v Clark</i> , 463 Mich 459; 613 NW2d 538 (2000)	9
<i>People ex rel. Wayne Prosecuting Attorney v Bitonti</i> , 306 Mich 115, 119; 10 NW2d 329 (1943)	13
<i>People v Griffin</i> , 235 Mich App 27; 597 NW2d 176 (1999) 2-3, 4, 5, 7, 12, 13, 14, 15, 16, 17	
<i>People v Schaefer</i> , 473 Mich 418, 427; 703 NW2d 774 (2005)	2
<i>Priest v State</i> , 879 A2d 575 (Del, 2005)	8, 9, 10
<i>State v Allen</i> , 403 SE2d 907 (NC App, 1991), rev'd on other gds 332 NC 123; 418 SE2d 225 (1992)	7, 9
<i>State v Fernandez</i> , 948 P2d 872 (Wash App, 1997)	5
<i>State v Mitchell</i> , 336 NC 22; 442 SE2d 24, 30 (1994)	7
<i>State v Westeen</i> , 591 NW2d 203 (Iowa, 1999)	8, 9
<i>United States v Clavis</i> , 956 F2d 1079 (CA 11, 1992)	5-6, 8
<i>United States v Dowling</i> , 278 F 630, 643 (SD Fla, 1922)	14
<i>Wahrer v State</i> , 901 P2d 442 (Alas App, 1995)	12
<u>STATUTES:</u>	
1997 PA 153	3
MCL 333.7121	4
MCL 333.7401(2)(a)(iv)	1
MCL 333.7405(1)(d)	1, 2, 13
MCL 333.7521	13

OTHER:

Anno: *Validity and construction of state statutes criminalizing the act of permitting real property to be used in connection with illegal drug activities*, 24 ALR5th 428 (1994) 4, 5

Anno: *Validity, construction and application of state or local laws prohibiting maintenance of vehicles for the purpose of keeping or selling controlled substances*, 31 ALR5th 760 (1995) 5

Black's Law Dictionary (5th ed, 1979) 7, 12

The New Shorter Oxford English Dictionary (4th ed., 1993), I Vol 10, 11

COUNTERSTATEMENT OF JURISDICTION

Defendant-Appellee accepts as accurate the Statement of Jurisdiction made in Plaintiff-Appellant's brief.

COUNTERSTATEMENT OF QUESTIONS PRESENTED

I. WHETHER A DEFENDANT MUST "KEEP OR MAINTAIN" A VEHICLE USED FOR THE PURPOSE OF SELLING A CONTROLLED SUBSTANCE "CONTINUOUSLY FOR AN APPRECIABLE PERIOD OF TIME" AS REQUIRED BY *PEOPLE V GRIFFIN*, 235 MICH APP 27, 32-33 (1999), IN ORDER TO SUSTAIN A CONVICTION UNDER MCL 333.7405(1)(d)?

II. WHETHER THE EVIDENCE PRESENTED IN THIS CASE WAS SUFFICIENT TO SUSTAIN THE DEFENDANT'S CONVICTION FOR KEEPING OR MAINTAINING A DRUG VEHICLE?

COUNTERSTATEMENT OF FACTS

In a jury trial, Defendant was convicted of delivering less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), and maintaining a drug vehicle, MCL 333.7405(1)(d). He was sentenced to probation for 24 months, with the first 182 days to be served in the county jail.

Defendant-Appellee accepts as accurate the statement of facts made in the brief of Plaintiff-Appellant.

I. WHETHER A DEFENDANT MUST "KEEP OR MAINTAIN" A VEHICLE USED FOR THE PURPOSE OF SELLING A CONTROLLED SUBSTANCE "CONTINUOUSLY FOR AN APPRECIABLE PERIOD OF TIME" AS REQUIRED BY *PEOPLE V GRIFFIN*, 235 MICH APP 27, 32-33 (1999), IN ORDER TO SUSTAIN A CONVICTION UNDER MCL 333.7405(1) (d)?

This Court reviews a lower court's interpretation of a statute *de novo*, *People v Schaefer*, 473 Mich 418, 427; 703 NW2d 774 (2005).

MCL 333.7405(1) (d) states:

(1) A person:

(d) Shall not knowingly keep or maintain a store, ship, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, that is frequented by persons using controlled substances in violation of this article [Article 7 of the Public Health Code, which governs controlled substances] for the purpose of using controlled substances, or that is used for keeping or selling controlled substances in violation of this article.

In *People v Griffin*, 235 Mich App 27, 32; 597 NW2d 176 (1999), the Court of Appeals stated:

Defendant's argument concerning the conviction of maintaining a drug house hinges on the proper interpretation of the applicable statute. At the time of defendant's arrest and conviction, MCL 333.7405(d); MSA 14.15(7405)(d) stated that a person "[s]hall not knowingly keep or maintain a . . . dwelling . . . or other structure or place, which is resorted to by persons using controlled substances in violation of this article for the purpose of using these substances, or which is used for keeping or selling them in violation of this article." Defendant does not argue that the house in question, at 732 Bethany in Saginaw, was not itself a drug house under MCL 333.7405(d); MSA 14.15(7405)(d), but argues instead that he did not "keep or maintain" the property for purposes of the statute.

Statutory interpretation is a question of law calling for review *de novo*. *Michigan Basic Property Ins Ass'n v Ware*, 230 Mich App 44, 48; 583 NW2d 240 (1998). "The primary purpose of statutory interpretation is to ascertain and give effect to the intent of the Legislature." *Id.* at 49. "[T]he meaning of the Legislature is to be found in the terms and arrangement of the statute without straining or refinement, and the

expressions used are to be taken in their natural and ordinary sense." *Gross v General Motors Corp*, 448 Mich 147, 160; 528 NW2d 707 (1995). A court should interpret a statute in the way that best advances its legislative purpose. *People v Adair*, 452 Mich 473, 479-480; 550 NW2d 505 (1996).

We hold that to "keep or maintain" a drug house it is not necessary to own or reside at one, but simply to exercise authority or control over the property for purposes of making it available for keeping or selling proscribed drugs and to do so continuously for an appreciable period. This reading of the statute comports with other jurisdictions' construction of the terms "keep or maintain" as used in similar statutes. (Footnotes omitted) *Griffin*, pp 31-33

Amendments to the statute (in 1997 PA 153) did not affect the meaning of the terms "keep" and "maintain" as used in this provision, *Griffin*, p 32, fn 1; "resorted to by" was changed to "frequented by" and the other changes were entirely formal.

While the principles discussed in *Griffin* no doubt informed the decision in the instant case, the specific phrase on which leave was granted here ("continuously for an appreciable period of time") was used in reference to "a drug house" in that opinion. It is likely that the Court of Appeals' use was with regard to the facts and issues in that case (an admitted "drug house" where the defendant contended he did not "keep or maintain" it) . It may not have been intended to preclude conviction where proof that a defendant "kept" or "maintained" a vehicle or structure involved was not based merely on use. The key principle to be drawn from *Griffin* is that "keep or maintain" does not mean "use" or "possess" and that evidence that a structure or vehicle was, on a single occasion, "frequented by persons using controlled substances" or "used for keeping or selling controlled substances" does not alone

satisfy the statute.

Unlike the case in *Griffin*, where the proofs showed satisfactorily that the house was a "drug house", i.e., kept or maintained for the prohibited purpose, but the defendant contended he was not the person who kept or maintained it as such, the proofs here showed neither that the vehicle was kept or maintained for a prohibited use nor that Defendant was a person who kept or maintained it for such use.

OTHER JURISDICTIONS

MCL 333.7121 states in part:

(2) This article [Article 7 of the Public Health Code, concerning controlled substances] shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this article among those states which enact laws similar to it.

Plaintiff cites an annotation, *Anno: Validity and construction of state statutes criminalizing the act of permitting real property to be used in connection with illegal drug activities*, 24 ALR5th 428 (1994), but does not concede that the annotation (and the cases discussed therein) support the same view taken by the Court of Appeals in *Griffin*. In fact, the annotation in question cites a large number of opinions from other jurisdictions for the proposition that "more than a single isolated instance of illegal drug activity is required to be shown under state statutes criminalizing the act of permitting a place to be used for illegal drug activities", at pp 443-445. Roughly 30 opinions (not including any from Michigan) are cited in support of that proposition. The annotation cites no opinions supporting the view

advanced by the People here. The authors of the annotation concluded:

Specifically as to the nature and extent of the illegal drug activities involved, the courts have held that these activities must be of more than a single isolated instance (§6), and have held evidence sufficient to convict where there is proof that the illegal drug activities at a place maintained by defendant reflect a continuity of purpose, are continuing and repetitious, have a recurrent or habitual nature, or are sequential or successive (§7[a]). Conversely, the courts have found evidence insufficient to convict under these statutes where there is no proof of any illegal drug activities at a place maintained by defendant which amounts to more than a single or isolated incident (§7[b]).

24 ALR5th 428, 438

A later annotation reached much the same conclusion regarding laws (usually the same statutory provisions) concerning the maintenance of vehicles for keeping or selling drugs, *Anno: Validity, construction and application of state or local laws prohibiting maintenance of vehicles for the purpose of keeping or selling controlled substances*, 31 ALR5th 760 (1995).

In *Griffin*, the Court cited *State v Fernandez*, 948 P2d 872 (Wash App, 1997) (this portion of the opinion is published) in support of its conclusion. Abundant evidence had been presented showing that the defendant lived in the house in question and that the house had been used, for an extended period of time, for drug activities. The real issue was whether or not that defendant had sufficient control of the house to be deemed to have kept or maintained it; this was similar to the issue involved in *Griffin*, but did not involve the issue here. *Fernandez* itself does not address an issue similar to that presented here.

Plaintiff claims that *Fernandez* relied on *United States v*

Clavis, 956 F2d 1079 (CA 11, 1992), which (Plaintiff claims) listed the elements of the federal version of the maintaining a drug house statute, not including any requirement of continuity. *Clavis*, however, on the same page cited by Plaintiff, states as a "critical element" continuity in pursuing the manufacture, distribution, or use of the controlled substance, at p 1090. The Court stated, ". . . we construe the statute, as did the district court in its jury instructions, to exclude a single, isolated act as a violation and to embrace some degree of continuity", at p 1094. The Court approvingly cited jury instructions that an "'isolated instance of use, distribution, or manufacture is not a violation'" and that "maintain" is a word that "'contemplates continuity in pursuit of the alleged objectives'", *Clavis*, at p 1090.

In *Dawson v State*, 894 P2d 672 (Alas App, 1995) (cited in *Griffin*), the Alaska Court of Appeals examined decisions from other states and dictionary definitions of "keep" and "maintain" in concluding that the statute required proof of continuity and precluded conviction for an isolated incident. The Court reasoned that, in "their ordinary meaning, both words ["keep" and "maintain"] strongly imply an element of continuity or duration", at p 676.

In *Meeks v State*, 872 P2d 936 (Okla Cr App, 1994) (also cited in *Griffin*), the Oklahoma Court of Criminal Appeals held that its substantially identical statute required that the jury be instructed that it had to find that the defendant had "control, ownership, or management" of the structure or vehicle, at p 939.

It required substantial conformance with the following instruction defining "keep or maintain":

"You are further instructed that a conviction under this section requires that the activity giving rise to the charge must be more than a single, isolated activity. Rather, the term implies an element of some degree of habitualness."
Meeks, p 939

The Court also required trial courts to instruct juries that they had to find that a substantial purpose of the place was for using, selling, or keeping controlled substances, at p 939.

In *State v Allen*, 403 SE2d 907 (NC App, 1991), *rev'd on other gds* 332 NC 123; 418 SE2d 225 (1992), the North Carolina Court of Appeals relied heavily on evidence showing a long-term "grow" operation, and specifically noted the evidence of excessive use of electricity over a period of at least three months during which the operation was conducted. Duration was not at issue and not discussed at length. The Court did, however, rely on the definition in *Black's Law Dictionary* (5th ed, 1979), stating "maintain" means "to bear the expense of; carry on . . . hold or keep in an existing state or condition", at p 913. Subsequently, the North Carolina Supreme Court analyzed the same statutory provision, stating that "'keep' therefore denotes not just possession, but possession that occurs over a duration of time", *State v Mitchell*, 336 NC 22; 442 SE2d 24, 30 (1994). It joined the majority interpretation in holding that the words "keep or maintain" preclude conviction based on an isolated act.

Griffin also cited *Barnes v State*, 339 SE2d 229 (Ga, 1986), in support of its holding. There, the Georgia Supreme Court held

that, to convict under a substantially identical statute, the proofs had to be sufficient to show more than a single, isolated instance of the prohibited drug activity. It noted that the evidence might be found on a single occasion, but had to show that the crime was of a continuing nature.

Another review of the relevant authorities was made by the Iowa Supreme Court in *State v Westeen*, 591 NW2d 203 (Iowa, 1999). That Court cited the opinions in *Dawson, Clavis, Barnes, and Meeks*, and adopted their reasoning in concluding that the Legislature's use of "keep or maintain" in Iowa's statute required a showing of "some degree of continuity" and required "proof that a substantial purpose of the dwelling was for the ongoing storing, possessing or selling of drugs", *Westeen*, p 210.

Defendant concedes that a single jurisdiction (Delaware) has adopted a different view from that adopted by other jurisdictions. In *Priest v State*, 879 A2d 575 (Del, 2005), however, the Delaware Supreme Court noted:

We recognize that most, if not all, other UCSA [Uniform Controlled Substance Act] jurisdictions reject the "single occurrence" approach that Delaware endorses.
Priest, p 579, fn 22

The Court went on to state that, since it was reversing *Priest's* conviction on other grounds, it had "no occasion to reassess [its] position vis-a-vis the other states" on this issue, *Priest*, p 579, fn 22. Note that the opinion in *Priest* did not undertake a careful analysis of the language of the statutory provision or of legislative intent, but simply concluded that the language was ambiguous and then applied its view of the legislative intent

-
:
- behind statutes punishing drug crimes (the statute "should be read broadly to discourage the use of a vehicle for the transportation or use of drugs").

To summarize the state of the law in other jurisdictions:

1. All jurisdictions (with one exception, Delaware) which have considered the question reject the interpretation that a person can "keep or maintain" a place/vehicle for illegal drug activity by a single or isolated use of the place or vehicle.
2. There is some indication in its most recent pronouncement on the subject (in *Priest*) that the Delaware Supreme Court may reassess its position.

If this Court is to construe this provision "to effectuate its general purpose to make uniform the law with respect to the subject of this article among those states which enact laws similar to it", it should hold that, at a minimum, sufficient evidence must establish more than a single or isolated instance of use for a prohibited purpose, must show some continuity in the use, and must show that a substantial purpose of the use of the building or vehicle is to use, sell, or store drugs.

TEXTUAL ANALYSIS

This Court has properly rejected statutory interpretations where a court finds a "supposed statutory purpose that compels a favored result independent of any textual analysis", *People v Clark*, 463 Mich 459; 613 NW2d 538 (2000) (an apt description of the analysis in the Delaware opinions).

In *Dawson*, *Allen*, *Westeen*, and *Bartlett*, *infra* (but not in

Priest), the courts examined dictionary definitions of "keep" or "maintain" in determining legislative intent.

Both "keep" and "maintain" are verbs with a wide variety of meanings. Note that "keep" in this statutory provision alone has two different meanings. Its first use is at issue here. Its second use (a structure or vehicle "used for keeping . . . controlled substances") is closer to the concept of to "store" and not really relevant here.

Many of the meanings of "keep" are not likely relevant to the meaning of this statute. "Keep" can mean to observe or abide by ("keep a promise"), or observe with formality ("keep the holy days"). More relevant are the following meanings:

"Maintain or preserve (a place etc.) in proper order"

"Preserve in being or operation; continue to have"

"Carry on; continue to cause"

"maintain, or cause to continue in a specified condition, state, place, position, action, or course"

"Cause or induce to remain in a place; detain"

"Retain in one's possession or control; continue to have, hold, or possess"

"Carry on and manage, conduct as one's own"

"Maintain continuously"

"Maintain in one's service"

The New Shorter Oxford English Dictionary (4th ed., 1993), I Vol 1476

"Maintain" is also susceptible of many different meanings, none of them consistent with the notion of "use" or "possess" on

one occasion. It can mean to practice habitually ("maintain a custom"), assert the truth or validity of a position ("maintain that Elvis is still alive"), or to carry on ("maintain a war or lawsuit"). More relevant to the issue here, it can mean:

"Preserve or retain"

"Cause to continue [a state of affairs or activity]"

"secure (a person) in continued possession of property"

"cause to continue in a specified state, relation, or position"

"Support by expenditure"

"sustain (life) by nourishment"

"continue in an action or state"

"Provide for the keep of (an animal)"

"Pay for the upkeep of; provide means for the equipment of"

"keep (a road, a building, etc.) in repair"

"take action to preserve (a machine etc.) in working order"

The New Shorter Oxford English Dictionary (4th ed., 1993), I Vol 1669

The courts (including the Court of Appeals) that have concluded that "keep" and "maintain" import a sense of continuity of use for the prohibited purposes (being frequented by users, keeping as storing, and selling) have shown fealty to the common meanings of the words used by the Legislature. Note also that the Legislature consistently used "controlled substances" rather than "a controlled substance" in this provision, suggesting that it did not anticipate the use of the statute to prosecute a person for a

single instance of use. The fact that cases exist where the statute's applicability might be ambiguous should not cause this Court decide a case any differently where the language of the statute unambiguously does not apply.

MICHIGAN AUTHORITIES

Plaintiff argues that the Court of Appeals (in *Griffin* and here) was bound by its earlier decision in *People v Bartlett*, 231 Mich App 139; 585 NW2d 341 (1998), in which continuity of use was not argued. In *Bartlett*, the evidence clearly supported the conclusion that use of the place for prohibited purposes had continued over a long period of time. No claim was made that an isolated instance was involved. The issue simply never arose. The Court of Appeals is not bound by decisions which do not decide or discuss an issue which arises in a subsequent case. *Bartlett* did, however, quote *Black's Law Dictionary* (5th ed.) to define "maintain", stating:

"The words 'maintain' and 'maintaining' in statutes prohibiting maintenance of a liquor nuisance denote continuous or recurring acts approaching permanence."
Bartlett, p 146

The *Bartlett* Court also cited approvingly *Wahrer v State*, 901 P2d 442 (Alas App, 1995) for the proposition that such a statute "requires proof that the premises were being used for continuing illegal drug activity". To the extent it addressed the issue, *Bartlett's* reasoning was consistent with that in *Griffin*.

Plaintiff argues that this Court should analogize the interpretation of this statute to interpretations of the Michigan statute governing civil forfeiture of vehicles used in controlled

substance offenses. This argument would be better addressed to the Legislature. That is the body which enacted both provisions in the Public Health Code of 1978, without using the same or similar language to describe the activity in question. In MCL 333.7521, the Legislature made subject to forfeiture, "a conveyance, including an aircraft, vehicle, or vessel used or intended for use, to transport, or in any manner to facilitate the transportation, for the purpose of sale or receipt of property", including controlled substances. The Legislature clearly set the bar much lower ("used" or "intended for use" as opposed to "keep or maintain") to subject the user to civil liability than to convict the maintainer of a felony. It clearly shows that the Legislature knew how to impose liability for use based on an isolated incident. It did not choose to do so in MCL 333.7405(1)(d).

The *Griffin* Court's interpretation of "keep or maintain" in the relevant statute is also consistent with this Court's analysis in cases where "maintaining" a nuisance was charged. In *People ex rel. Wayne Prosecuting Attorney v Bitonti*, 306 Mich 115, 119; 10 NW2d 329 (1943), the Court stated:

Defendant also claims that proof of a single instance of a prohibited use was not sufficient to justify a finding that the vehicle was a nuisance. With this position, we agree. A nuisance involves the idea of repetition or continuity, and is not to be predicated upon proof of a single isolated prohibited act. * * * True, in some cases, a nuisance use of premises has been found, such as liquor law violations, where a single sale was involved, yet, in these cases, other facts were present from which it could be reasonably inferred that the unlawful act was habitual in nature. (Citations omitted)

In *Griffin*, the Court of Appeals followed well-known and well-

travelled paths of statutory construction. In *United States v Dowling*, 278 F 630, 643 (SD Fla, 1922), the Court held that "[t]he word 'maintenance' implies continuance, and the act implies it from the use of the word 'keep'". That Court cited an earlier holding by the Massachusetts Supreme Judicial Court, stating that "the words 'keep or maintain' import a certain degree of permanence", *Commonwealth v Patterson*, 138 Mass 498, 500 (1885).

The Court of Appeals did not err in its statutory interpretation in *Griffin*. Its interpretation prudently gave meaning to the terms "keep" and "maintain", and distinguished them from "use" and "possess". The interpretation made by the Court in *Griffin* was based on the plain meaning of the language of the statute; the Court correctly determined the intent of the Legislature based on the language that that body used.

LEGISLATIVE INTENT

Although reliance on the language used by the Legislature is the primary method to insure advancement of the Legislature's intent, this Court should also consider what the Legislature was trying to accomplish in this provision (in a case in which the language alone is not unambiguous). It would be a mistake for the Court to accept blithely Plaintiff's claim that the Legislature wanted to heap additional (relatively meaningless) convictions on persons who are found possessing or selling drugs in a building or vehicle (by, essentially, affording the state an additional automatic conviction for using the vehicle or building). It is far more likely that the Legislature wanted to punish a person who

facilitated drug activities by keeping or maintaining a building or vehicle for use by possessors or sellers, but who was not himself likely to be convicted of possession or sale of those drugs. While securing easy convictions with virtually no impact on the drug trade may be attractive to some, it is doubtful that it is the reason for the enactment of "keep or maintain" provisions. It is far, far more likely that the Legislature intended to affix criminal liability to those who do not themselves possess or sell drugs (or cannot be proven to have done so), but whose contribution to the problem is in keeping or maintaining a vehicle/building to be used by those who can be convicted of more serious offenses. To achieve this legislative purpose, adopting a tortured construction of "keep or maintain" would not be particularly useful.

It is unlikely that any member of the Legislature thought this statute would add any deterrent effect to that already created by laws punishing possession or delivery (and containing far more onerous penalties). Its purpose was almost certainly to deter continuing behavior by the owner or possessor of a building or vehicle who does not himself physically possess or sell the drugs. The proofs against a proper target of such a prosecution are almost certain to emphasize the repetitive or continuous nature of such use. The interpretation advanced by Plaintiff here does little or nothing to promote the actual purpose of the Legislature in enacting this provision.

SUMMARY

The *Griffin* Court's statement of the law is somewhat different

from this Court's statement in its order granting leave in this case. In *Griffin*, the Court was considering a claim that a house admittedly kept and maintained for a prohibited purpose was not kept or maintained by that particular defendant. Its opinion suggests that the state did not there claim that the evidence at trial had shown that defendant kept or maintained (or intended to keep or maintain) the premises for a prohibited purpose other than by being there.

To affirm this defendant's conviction, this Court would have to ignore the language of the statute, ignore its purpose, and ignore almost all interpretations of similar or identical statutes published in other jurisdictions. While the test stated by the *Griffin* Court may be too narrow (where other evidence showing an intent to use regularly a structure or vehicle for a prohibited purpose is presented), it is an appropriate test where no such evidence is present.

II. WHETHER THE EVIDENCE PRESENTED IN THIS CASE WAS SUFFICIENT TO SUSTAIN THE DEFENDANT'S CONVICTION FOR KEEPING OR MAINTAINING A DRUG VEHICLE?

In the instant case, the evidence (viewed in a light most favorable to Plaintiff) showed that Defendant drove a van, that he had a small quantity of cocaine in the van, that he sold that cocaine to a person in a parking lot, and that he put the money from that sale in the van. Although Plaintiff (in their brief to this Court) claim that Defendant owned the van, counsel has not found any proof in the record showing it was owned or legitimately

possessed by Defendant. No evidence was presented to show that: Defendant had any ownership or possessory interest in the van; that he had ever used the van before; or that the van had any specific use in the drug business, except to transport Defendant (who had drugs in his possession) on that occasion. No evidence showed that the van had been, in any sense, adapted to be better put to use in the drug business. No packaging materials were found. No evidence was presented which would support a reasonable inference that the car was intended for continuing use in the drug trade.

The jury instructions indicated that the People's theory was that Defendant knowingly kept or maintained a vehicle and that the vehicle was used for the purpose of selling controlled substances. It does not appear that any other theory could conceivably be applied based on the statute (there being no evidence of use of drugs or storing drugs in the vehicle).

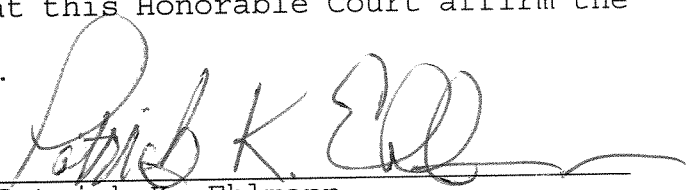
The evidence showed only that, on this one occasion, the Defendant drove the vehicle in question. The evidence entirely failed to show that Defendant "kept" or "maintained" the vehicle in question as a vehicle where drugs were kept or used. It only showed (at best) that, on a single occasion, Defendant used the vehicle and that drugs were in the vehicle at that time. This falls far short of showing keeping or maintenance, which clearly implies repeated or continuous use over time, *Griffin*, p 32. Here, we know nothing (by way of either evidence or reasonable inference) of the use of the vehicle, except for the instant in time where Defendant drove into view of the officers and sold the small amount

of cocaine to the woman. Plaintiff made no argument that Defendant kept drugs in the car for any other period of time. Evidence that Defendant had drugs in a vehicle (or a house, boat, or other structure) on a single brief occasion is not sufficient to show that he "kept" or "maintained" the vehicle for that purpose. The decision of the Court of Appeals on this issue should be affirmed.

RELIEF REQUESTED

Defendant-Appellee prays that this Honorable Court affirm the decision of the Court of Appeals.

Date: 10-07-2006


Patrick K. Ehlmann
Attorney for Defendant-Appellee